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AFFIDAVIT—MISDEMEANOR CASES—COUNTY COURT
JUDGE MAY PREPARE—COMPLAINING PARTY—CHAPTERS
1907. to 1923., R.C.

SYLLABUS:

Although it is primarily the duty of the complaining party to prepare an affidavit in a misdemeanor case that is to be filed in the county court, there is nothing in Chapters 1907. to 1923., Revised Code, to prohibit the county court judge from furnishing any necessary assistance in the preparation of said affidavit.

Columbus, Ohio, December 16, 1958

Hon. Fred F. Fox, Prosecuting Attorney
Noble County, Caldwell, Ohio

Dear Sir :

Your request for my opinion presents the very limited question of who should prepare an affidavit in a misdemeanor case that is to be filed in the county court.

The statutes do not specifically designate the person who is to prepare the affidavit, but it must be noted that the very jurisdiction of the county court in a misdemeanor case depends upon the filing of such affidavit. It was stated in *State v. Lanser*, 111 Ohio St., 23, at page 26, that :

“It should be borne in mind at the outset that the *jurisdiction of one accused of an offense before a justice of the peace, mayor, or police judge can be acquired only upon the filing of an affidavit* under the provisions of Section 13496, General Code. The filing of the affidavit is prerequisite to the issuing of the warrant, and without the filing of a proper affidavit no jurisdiction is acquired. It is also essential to the validity of such affidavit that it be sworn to by the affiant before some person who has authority to administer oaths, and if such affidavit shows upon its face that it is not sworn to before a person authorized by law to administer the oath it has no legal force whatever. 2 Corpus Juris, 328. * * *”

Assuming that a proper party for filing an affidavit is before the court, it would seem that that person probably has the primary responsibility for its preparation ; however, it has long been accepted practice for the magistrate to aid in this preparation by furnishing a proper form, and in many cases actually typing or writing such affidavit for the complaining party. The court in the *Lanser* case, cited above, found no objection to a mayor signing the jurat of an affidavit and there would appear to be no legal reason why the affidavit itself could not also be prepared by the magistrate. Surely justice would not be served if a county court judge were denied jurisdiction because a complaining party was incapable of preparing an affidavit and the judge was prohibited from furnishing assistance.

Accordingly, it is my opinion and you are advised that :

Although it is primarily the duty of the complaining party to prepare an affidavit in a misdemeanor case that is to be filed in the county court,

there is nothing in Chapters 1907. to 1923., Revised Code, to prohibit the county court judge from furnishing any necessary assistance in the preparation of said affidavit.

Respectfully,

WILLIAM SAXBE

Attorney General